

**Colorado Commission on Criminal and Juvenile Justice  
Sentencing Reform Task Force**

**Sentence Structure Working Group  
MINUTES**

September 14, 2021 / 2:00PM-5:00PM  
Virtual Meeting

**ATTENDEES:**

**WORKING GROUP MEMBERS**

Michael Dougherty, *Working Group Leader*, District Attorney, 20<sup>th</sup> Judicial District (JD)  
Maureen Cain, Office of the State Public Defender  
Christie Donner, Colorado Criminal Justice Reform Coalition  
Valarie Finks, Crime Victim Compensation, 1<sup>st</sup> JD  
Jessica Jones, Defense Attorney  
Dan Rubinstein, District Attorney, 21<sup>st</sup> JD  
Lisa Wayne, Defense Attorney

**ABSENT**

Tom Raynes, Colorado District Attorneys' Council

**STAFF**

Jack Reed, Division of Criminal Justice  
Damien Angel, Division of Criminal Justice  
Laurence Lucero, Division of Criminal Justice  
Stephane Waisanen, Division of Criminal Justice  
Kevin Ford, Division of Criminal Justice

**GUESTS**

Chrystal Owin, Division of Criminal Justice, Office of Community Corrections  
Katie Ruske, Division of Criminal Justice, Office of Community Corrections

<p><b>Welcome &amp; Agenda</b>  <i>Michael Dougherty,                  Working Group Leader</i></p>	<p><b>Discussion</b></p> <p>Michael Dougherty, Working Group Leader, welcomed the Working Group members. He also welcomed Katie Ruske and Chrystal Owin (Division of Criminal Justice, Office of Community Corrections (OCC)), who will provide a presentation during the meeting. Michael also pointed out that Kristen Hilkey submitted a memo to the group that is being shared now and will be addressed later in the meeting as well.</p> <p>Michael called the meeting to order and outlined the agenda. He explained there would be an update from the Sentence Structure Study Group that will include a proposed course of action for the Working Group to consider.</p>
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<p><b>Issue/Topic</b>                  Community Corrections in Colorado  <i>Katie Ruske and Chrystal Owin,                  Office of Community Corrections</i></p>	<p><b>Discussion</b></p> <p>Michael introduced Katie and Chrystal and explained to them how the Sentence Structure Working Group (WG) fits into the overall scheme of the CCJJ. He added that <i>certainty in sentencing</i> is one of the areas the WG is currently addressing. This topic may result in effects on parole and community corrections and the different “off-ramps” (return-to-community options) a person has toward the end of their prison sentence.</p> <p>Katie, OCC Manager, introduced herself and Chrystal Owin, the OCC Implementation Specialist and Transition Coordinator. She explained that she aims to keep their presentation high-level and focused on the questions that were asked of them by this group prior to the meeting.<sup>1</sup></p> <p>Chrystal began the presentation by outlining the statutes that currently govern community corrections and placements into community corrections programs with key points and take-aways as follows:</p> <ul style="list-style-type: none"> <li>• §18-1.3-301, C.R.S., <i>Authority to place offenders in community corrections programs</i> is the statute that allows Colorado Department of Corrections (CDOC) clients to be transferred into community corrections as part of transition and re-entry.</li> <li>• The statute also allows clients to be directly sentenced to community corrections who would otherwise be eligible for a CDOC prison sentence. This diversion (or Direct Sentence) option is fairly unique to Colorado and the focus of the presentation.</li> <li>• Senate Bill 2021-271 added language to the statute expanding the use of community corrections and allowing courts and other criminal justice agencies to contract directly with community corrections programs (e.g., work release programs) for non-felony offenders. However, misdemeanor program participation may not be paid using General Fund dollars. This type of program participation may be funded by local funds, grants, through Correctional Treatment Fund (CTF) dollars,<sup>2</sup> or paid “out-of-pocket” by participants themselves.</li> </ul>
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<sup>1</sup> The full presentation can be found under the “Materials - Working Groups” tab at, [ccjj.colorado.gov/ccjj-srtf](http://ccjj.colorado.gov/ccjj-srtf)

<sup>2</sup> Information on the Correctional Treatment Board may be found at, [courts.state.co.us/Administration/Unit.cfm?Unit=ctb](http://courts.state.co.us/Administration/Unit.cfm?Unit=ctb).

<p style="text-align: center;"><b>Issue/Topic</b></p> <p style="text-align: center;">Community Corrections in Colorado  <i>Katie Ruske and Chrystal Owin,</i>  <i>Office of Community Corrections</i>                      (continued)</p>	<ul style="list-style-type: none"> <li>• There is additional language in the statute specifying that those “Condition of Probation” clients who need residential drug treatment are also eligible for community corrections programs, but only if they are found eligible and only as a participant in the 90-day, inpatient, Intensive Residential Treatment (IRT) program. This may be funded through Correctional Treatment Fund dollars, local funds, grants, or paid “out-of-pocket” by participants themselves.</li> <li>• Chrystal shared that there is a general misconception that, if a client is sentenced for a drug offense or whose charges include drug-related offenses, the person is automatically eligible for an IRT in-patient program in community corrections. However, this is not the case. In Fiscal Year 2020, 6,384 were assessed for substance abuse treatment needs, but only 8.2% qualified for IRT placement. The average daily population (ADP) across all IRT programs was 372 clients and about 21% (or 78 individuals) were “Condition of Probation” clients.</li> <li>• Chrystal provided the following breakdown of community corrections <i>per diem</i> rates for FY 2022:                         <ul style="list-style-type: none"> <li>\$49.16 – Base <u>Residential</u> <i>per diem</i></li> <li>\$6.65 – Base <u>Non-residential</u> <i>per diem</i></li> <li>\$116.89 – FY19 CDOC Average <i>per diem</i></li> </ul> </li> <li>• Katie explained that specialized beds in community corrections (e.g., IRT beds) are funded at a higher rate than the base <i>per diem</i> rate. This additional amount is referenced as the <i>differential rate</i>. The differential rate (base rate plus the additional funding) for the specialized beds are:                         <ul style="list-style-type: none"> <li>Base <u>residential</u> plus specialized differential -</li> <li>\$94.07 – Cognitive Behavioral Treatment Pilot Programs</li> <li>\$94.85 – IRT</li> <li>\$82.14 – Inpatient Therapeutic Community</li> <li>\$83.86 – Residential Dual Diagnosis Treatment</li> <li>\$83.86 – Sex Offender Treatment</li> <li>Base <u>non-residential</u> plus specialized differential -</li> <li>\$23.86 – Outpatient Therapeutic Community</li> </ul> </li> <li>• The specialized-bed population in community corrections makes up approximately 20% of all clients.</li> <li>• Any person who is convicted of an offense reclassified from a “general” felony or drug felony to a misdemeanor (as a result of Senate Bill 2021-271) is no longer eligible for community corrections placement funded through General Fund dollars.</li> <li>• Michael Dougherty asked about the effect of the reclassification of some felony sentences to misdemeanors that may result from the upcoming work on the felony grid and offenses. Might this reclassification reduce the treatment availability and support for individuals whose offense may be classified as a misdemeanor? How might this support be maintained?                         <ul style="list-style-type: none"> <li>○ Katie replied that the pros and cons and related treatment needs data regarding that situation requires more thorough discussion, and that it would be important to partner with other state agencies to identify</li> </ul> </li> </ul>
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<p style="text-align: center;"><b>Issue/Topic</b></p> <p>Community Corrections in Colorado  <i>Katie Ruske and Chrystal Owin,</i>  <i>Office of Community Corrections</i>                  (continued)</p>	<p>what options (other than community corrections) might be available to serve the treatment needs of these individuals.</p> <ul style="list-style-type: none"> <li>• Katie shared the average length of stay (in days) for those completing a successful <i>diversion</i> sentence to community corrections:                         <ul style="list-style-type: none"> <li>- 269.71 days - Residential Length of Stay (LOS)</li> <li>- 317.00 days - Non-residential LOS</li> </ul> </li> <li>• The focus during the last several years has been on Performance Based Contracting, which bases payments, extension, or renewals of contracts on contractor performance.</li> <li>• The OCC is also in the process of responding to a request for information from the Joint Budget Committee which includes information on:                         <ul style="list-style-type: none"> <li>- Payment models</li> <li>- Outcomes to evaluate the performance of community providers and local community corrections boards</li> <li>- A warning system for underperforming providers, and</li> <li>- Baseline targets and frequency of audits and evaluations</li> </ul> </li> </ul> <p>QUESTIONS</p> <ul style="list-style-type: none"> <li>• Working Group members sked questions and discussed the presentation topics. Maureen Cain asked about the high recidivism and failure rates, and noted the hesitancy of public defenders to try to get clients placed into community corrections.</li> <li>• Katie replied that the hope for Performance Based Contracting is to improve outcomes and push the system forward. She added that Colorado’s recidivism definition includes any new filing, which is not necessarily the nationally accepted definition and does result in less positive outcomes. For example, the Urban Institute recommends a recidivism definition of felony reconviction rather than any new filing. Katie summarized that regardless of the definition, the OCC is striving to do everything possible to increase success rates.</li> </ul> <p>Chrystal followed up by providing the following discharge rate information for FY20:</p> <ul style="list-style-type: none"> <li>▪ 55.1% - Successful completion</li> <li>▪ 15% - Neutral termination</li> <li>▪ 13.7% - Escape</li> <li>▪ 1.2% - New crime</li> <li>▪ 15% - House/Technical Violation</li> </ul> <ul style="list-style-type: none"> <li>• Christie Donner pointed out that, in regards to probation and community corrections, Colorado isn’t very successful with high-risk individuals. She asked for feedback about ways to better meet those people’s needs in community corrections, and ways to ensure appropriate programming is being provided.</li> <li>• Katie replied that with the high-risk population, it’s important to determine what an appropriate success rate actually is for them specifically, given that they are indeed high risk. Regarding programming, it’s about ensuring there’s a menu of services to address their criminogenic risk, and matching the right program at the right time. Katie agreed with Christie that there</li> </ul>
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<p style="text-align: center;"><b>Issue/Topic</b></p> <p>Community Corrections in Colorado  <i>Katie Ruske and Chrystal Owin,</i>  <i>Office of Community Corrections</i>                  (continued)</p>	<p>currently is no short-term stabilization option available in the current community corrections model but very well could be a need in Colorado.</p> <ul style="list-style-type: none"> <li>• Michael noted that under current statute on transition sentences, people are eligible for community corrections 19 months prior to their out date from DOC. He asked Katie her opinion on that timeframe                         <ul style="list-style-type: none"> <li>○ Katie replied that she believed it was intended to align with ISP-I eligibility. Therefore, if there was a push to move ISP-I eligibility up, then it would make sense to move up the eligibility for community corrections as well.</li> </ul> </li> <li>• Michael asked about the instances where someone is eligible for parole and community corrections in the same year, and the strain that can put on the system and victims as far as hearings and duplicative processes.                         <ul style="list-style-type: none"> <li>○ Katie replied that DOC clients can waive their referral to community corrections and, anecdotally, someone might waive their community corrections referral in the hopes for a positive parole board hearing outcome. However, the parole board will often recommend that the parole applicant transition through community corrections first, which is not the most efficient option for the system or the individual.</li> </ul> </li> <li>• Michael asked Katie for her opinion on why DOC inmates are waiving their community corrections eligibility.                         <ul style="list-style-type: none"> <li>○ Katie believes people waive because the only feedback they hear is from people who have been revoked to DOC for failing community corrections placement. The OCC had planned an in-reach program to DOC to promote community corrections, but that’s been put on hold with COVID-19. The OCC is starting to resume efforts to reach and educate people in DOC and hear their concerns.</li> </ul> </li> <li>• Maureen asked for clarification about the FY20, 1.2% discharge rate indicated for a new crime.                         <ul style="list-style-type: none"> <li>○ Katie confirmed that number is correct and represents 81 total clients. The number refers to a new crime while someone is actually in residential community corrections.</li> </ul> </li> <li>• Maureen asked about the length of stay (LOS) rate of 270 days in residential and 317 days in non-residential, and what exactly drives that amount of time. Katie replied the LOS should be driven by each individual’s case plan, so it’s hard to say if the average LOS is the right LOS.                         <ul style="list-style-type: none"> <li>○ Katie clarified that the term ‘neutral termination’ refers to people who may go back to court and are released from their sentence altogether, or someone may have a medical need that can be accommodated by another program and is therefore discharged. It’s a discharge that is no fault of the individual.</li> </ul> </li> <li>• What is the number of empty funded beds currently in community corrections?                         <ul style="list-style-type: none"> <li>○ Katie replied there are a lot of them. Numbers went up some after the height of COVID-19 but not at the rate anticipated. Data shows the need will be coming back but it hasn’t happened yet.</li> </ul> </li> </ul>
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<b>Issue/Topic</b>	<b>Discussion</b>
<p data-bbox="131 212 516 317">Working Group Follow-up Items <i>Michael Dougherty,</i> <i>Working Group Leader</i></p> <p data-bbox="282 531 367 562"><b>Action</b></p> <p data-bbox="120 569 529 636">Andrew Matson to participate in a future Listening Session</p> <p data-bbox="120 674 529 774">Sheriff and Police representatives to participate in a future Listening Session</p>	<p data-bbox="565 212 1338 243">Michael updated the group on a few additional items of interest.</p> <ul data-bbox="565 254 1516 896" style="list-style-type: none"> <li data-bbox="565 254 1516 428">• First, he shared that Andrew Matson, a former CCJJ Member representing Colorado CURE and a person with lived experience, requested time with the Sentence Structure Working Group to offer a perspective from himself and others regarding formerly incarcerated individuals. The group agreed to schedule him for an upcoming Listening Session.</li> <li data-bbox="565 438 1516 684">• Michael noted that he and Tom Raynes met with representatives from both the Sheriffs and Police Chiefs, and that it would be beneficial to schedule representatives for an upcoming Listening Session. The Sheriffs have concerns over issues such as unfunded mandates and the impact on jails, if sentences change. The Chiefs had questions about the effect of reducing sentence lengths across the board, specifically, how might this affect those currently serving a prison sentence.</li> <li data-bbox="565 695 1516 896">• Michael reminded the group that Kristen Hilkey distributed a memo immediately prior to the start of the meeting and asked Kristen if she wanted to schedule time on a future agenda for group members to discuss the memo. Kristen explained that the memo outlines the Parole Board’s thoughts regarding community corrections and that she is available to discuss it with individuals or with the group as a whole at a later date.</li> </ul>

<b>Issue/Topic</b>	<b>Discussion</b>
<p data-bbox="131 980 516 1085">Structure Study Group Proposal regarding Scope of Work and Timeline <i>Michael Dougherty,</i> <i>Working Group Leader</i></p> <p data-bbox="274 1514 375 1545"><b>ACTION</b></p> <p data-bbox="107 1551 540 1726">Working Group to continue work on “general” felony grid and “certainty in sentencing” provisions, delaying work on the victim felony grid until the 2023 legislative session.</p>	<p data-bbox="565 980 1516 1190">Michael provided an update on the Structure Study Group, reminding members that the original scope of work was multifaceted and included efforts to establish a “general” felony grid, victim-offenses felony grid, and sex offender grid; a review of the classification of felony offenses within those grids; and to establish greater “certainty in sentencing” with potential effects on probation, community corrections and parole.</p> <p data-bbox="565 1228 1516 1545">He explained that, while the group continues a robust work schedule and positive discussions with various stakeholders, it has become apparent that, altogether, it’s a tremendous amount of work to accomplish in a very short amount of time (considering the additional time required for a full review of proposals by the Sentencing Reform Task Force and the full Commission in advance of the upcoming 2022 legislative session). Additionally, Michael and Maureen Cain met with representatives from the Governor’s Office who suggested that the work might be bifurcated by spreading proposals across two legislative years.</p> <p data-bbox="565 1583 1516 1896">With that said, the Study Group proposed that current efforts focus only on the “general” felony grid and any related “certainty in sentencing” proposals (for example, revised good- and earned-time provisions) in preparation for the 2022 legislative session. That work would then serve as a subsequent template for the victim offenses felony grid and related “certainty in sentencing” provisions in preparation for the 2023 legislative session. Maureen added that slowing the pace of work would also allow for time to complete a prison population impact analysis, which is a critical evidentiary component in the final proposal.</p>

<p><b>Issue/Topic</b>                  Structure Study Group Proposal regarding Scope of Work and Timeline  <i>Michael Dougherty, Working Group Leader</i></p>	<p>Michael noted that, setting aside political concerns, the workload has, thus far, been immense and he doesn't want inadvertent mistakes to creep into the work simply due to the rush to complete it. Jessica Jones posited that, if implementation is delayed, would it make sense to delay <u>all</u> parts of the proposal and present it as a complete package in 2023? Michael replied that, the tougher conversations will take place around the victim felony piece, but, if the "general" offense grid is already in place it, will aid in those subsequent conversations. Christie Donner added the proposed sentencing changes will be a significant shift in perspective for legislators, and bifurcating the elements provides an opportunity to float the policy, have the debates, and "take the temperature" of legislators.</p> <p>Dan Rubinstein added that stakeholders want tangible evidence that work is being accomplished, and presenting the "general" grid is a demonstration of the effort. Also, a bill addressing the "general" felony grid might prevent the creation of "one-off" bills in the next legislative session.</p> <p>The discussion continued regarding the pros and cons of splitting the proposal versus combining all the elements into a single package. The group did not reach consensus on these alternatives. Therefore, in the meantime, Michael offered that the Working Group continue its review of the "general" felony grid (as components are offered by the Study Group) with a plan to update the Sentencing Reform Task Force at the next meeting. The reactions of Task Force members to the "general" grid and related offenses and to the issue of bifurcating the package will help inform the Working Group on both the amount of material that can be successfully shepherded through the Task Force and the best strategy to complete the work.</p> <p>Michael concluded the conversation by sharing that he, Dan and Tom Raynes are scheduled to present the provisions of the misdemeanor bill (S.B. 2021-271) to Colorado's 600/700 prosecutors at the upcoming District Attorney's Conference. Part of the presentation will include a preview of the felony work that's currently underway by the group.</p>
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<p><b>Issue/Topic</b>                  Public Comment &amp; Adjourn  <i>Michael Dougherty, Working Group Leader</i></p>	<p style="text-align: center;"><b>Discussion</b></p> <p>Michael called for any public comment and, seeing none, proceeded to the conclusion of the meeting by soliciting any additional business or updates.</p> <p>Christie shared that she has initiated the work to analyze the impact of the proposed sentencing changes on the prison population. She's collaborating with both Linda Harrison (Office of Research and Statistics, DCJ) and a researcher at the University of Denver.</p> <p>Hearing no further comment, Michael adjourned the meeting.</p>
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**Next Meeting**

Tuesday, October 5, 2021 / 3:00PM – 5:00PM (Virtual Meeting)

Meeting information will be emailed to members and posted at, [colorado.gov/ccjj/ccjj-meetings](http://colorado.gov/ccjj/ccjj-meetings)